

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PERCY FERGUSON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case Number 11-15072

Honorable David M. Lawson

Magistrate Judge R. Steven Whalen

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT,
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT,
REVERSING THE DECISION OF THE COMMISSIONER,
AND REMANDING FOR FURTHER PROCEEDINGS
PURSUANT TO SENTENCE FOUR OF 42 U.S.C. § 405(g)**

Presently before the Court is the report issued on January 23, 2013 by Magistrate Judge R. Steven Whalen pursuant to 28 U.S.C. § 636(b), recommending that the Court grant the plaintiff's motion for summary judgment, deny the defendant's motion for summary judgment, reverse the decision of the Commissioner, and remand the case for further proceedings under sentence four of 42 U.S.C. § 405(g). Although the magistrate judge's report stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt. #15] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's motion for summary judgment [dkt. #9] is **GRANTED**.

It is further **ORDERED** that the defendant's motion for summary judgment [dkt. #14] is **DENIED**.

It is further **ORDERED** that the decision of the Commissioner is **REVERSED**.

It is further **ORDERED** that the matter is **REMANDED** to the Commissioner for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). On remand the administrative law judge shall address all medical source opinions of record, and provide good reasons for his findings. The administrative law judge should include consideration of an "at will" sit-stand option as part of any hypothetical evaluations of the plaintiff's ability to work, and should also properly account for the plaintiff's moderate mental impairments.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 12, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 12, 2013.

s/Deborah R. Tofil
DEBORAH R. TOFIL